

MAMADOU NDOM  
220 - 13th ST.  
VALLEJO, CA 94590

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV 08

**MAMADOU NDOM.**  
(*Pro se*)

Petitioner

VS.

) Case No. \_\_\_\_\_

Robert S. Muller III, Department of Justice, in his official capacity as Director of FBI.  
Michael A. Cannon, Department of Justice, in his official capacity as Director of NNCP.  
Jonathan Scharfen, in his official capacity as Acting Director of USCIS.  
Evelyn Upchurch, in her official capacity as Director of USCIS / Texas Service Center.  
Michael Chertoff, in his official capacity as Secretary of Department of Homeland Security.  
Michael B. Mukasey, in his official capacity as United States Attorney General.

Respondent

## ✓ IMMIGRATION MANDAMUS CASE

### A. JURISDICTION:

I filed this civil action seeking a writ of mandamus regarding immigration benefits, filed pursuant to the mandamus statute, 28 USC § 1361, and the Administrative Procedure Act, 5 USC §§ 701. The United States District Court for the Northern District of California has jurisdiction over the subject matter of this cause of action pursuant to the provisions of Title 28 United States Code; Section 1361 (mandamus), Title 28 United States Code, Section 1331, and Title 28 United States Code, Section 1332, and the Administrative Procedure Act, 5 USC §§ 701. The federal question statute, 28 U.S.C. § 1331, provides the District court with full jurisdiction over an APA suit. The APA provides the court with a cause of action for unreasonable and unlawful agency delay.

### B. VENUE:

Venue is proper in this Court, the United States District Court for the Northern District of California, pursuant to Title 28 United States Code, Section 1391, and Title 28 United States Code, Section 1396. In conjunction with 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1361 (mandamus jurisdiction), and the Administrative Procedure Act, 5 USC §§ 701. The federal courts represent the necessary venue to entertain actions brought by private individuals against the U.S. Government to compel the government to adjudicate the application before it within a more reasonable timeframe.

## C. STATEMENT OF CLAIM:

1. I strongly believe that in certain cases such my case, where there have been lengthy delays due to name check processing; and the application is clearly approvable; a Writ of mandamus may be the only solution to a process that has no fixed ending. Under both the Administrative Procedures Act ("APA"), 5 U.S.C. § 551 and the Mandamus Act, both acts compel government officials to perform duties owed to the plaintiff. The Mandamus Act encompasses constitutional obligations as well as statutory duties.  
(See attached Exhibit#09 - Exhibit#10).
2. My "Statement of Claim and Background" will demonstrate "(1) the presence of novel and significant questions of law; (2) the inadequacy of other available remedies; and (3) the presence of a legal issue whose resolution will aid in the administration of justice".
3. My long overdue application has been pending without any action, whether an approval or rejection, for lengthy periods. I contend that this inaction has been caused by unreasonable delays in the completion of the Federal Bureau of Investigation ("FBI") name check program. My Name Check long pending process is improper, unlawful and pervasive because simply the wait is too long, unreasonable and unjustifiable, impacting my file, I do not have any other remedy, and no other remedy is available to me, and indefinite wait is not a remedy. I realize that one of the worst experiences ever in my life is the hardship of the indefinite immigration delays, due to FBI name check indefinite pending process.
4. USCIS is charged by law with the duty of deciding the applicant's application and that such adjudication in my case has been unreasonably withheld.
5. I am an Alien who has been approved for asylum and I did already undergo to the appropriate security and FBI name & background checks associated with grant of asylum and my application is made in good faith. I therefore have a constitutionally protected interest of the statute in an adjustment of status. I have a clear right to have my case adjudicated by the defendants, who had a mandatory duty to act. I understand that Mandamus cannot be used to instruct an official how to exercise discretion unless that official has ignored or violated statutory or regulatory standards delimiting the scope or manner in which such discretion can be exercised.
6. I am stating the following facts:
  1. Petitioner submitted AOS applications to become permanent residents of the United States with Texas Service Center of USCIS on March24, 2006 with the receipt SRC 06 136 52831 notice date of March27, 2006.
  2. Petitioner is eligible to be granted permanent resident status and is admissible to the United States for permanent residence.
  3. Petitioner's asylum-based AOS application was filed under INA § 209(b) after having been physically present in the United States for a period of one year after the date the petitioner was granted asylum status.
  4. Following the submission of AOS application, Petitioner was requested to provide and actually provided fingerprints for security checks on April 12, 2006 and as well as biometrics on April 12, 2006.
  5. In its receipt notice dated March27, 2006; USCIS stated that "it usually takes between

560 to 590 days from the date of this receipt to process this type of case."

6. However, USCIS acknowledged later that it has over 160,000 cases in backlog as of December 31, 2004, due to the restriction, commonly referred as yearly cap, imposed by section 209 of the Immigration and Nationality Act that only 10,000 asylees could adjust status to Lawful Permanent Resident (LPR) per year.

7. On March 4, 2002, the American Immigration Law Foundation and Dorsey & Whitney LLP filed class action lawsuit (Ngwanya v. Gonzales, No. 02-502 (RHK) D. Minn) against USCIS, challenging the USCIS (then INS) "failure to allot, on a yearly basis, all 10,000 refugee admissions designated by Immigration and Nationality Act (INA) §209(b), 8 U.S.C. §1 159(b), and by Presidential Decree specifically for individuals who have been granted asylum in the United States and who have applied to adjust their status to that of permanent resident."

8. In May 2005, a settlement was proposed and finally reached for the above class action. Under this settlement agreement, USCIS agreed to process additional 31,000 asylee adjustments during the fiscal year 2005, 2006 and 2007.

9. Furthermore, on May 11, 2005, the REAL ID Act was signed into law. Section 101(g) of the REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231, amends section 209 of the Immigration and Nationality Act to eliminate the yearly cap on asylee adjustments.

Therefore and most importantly, there has been no longer a limit to the number of asylees who can become lawful permanent residents in any given year since May 2005.

7. Because the INA, APA, Mandamus Act and regulations impose a duty to issue a decision, these provisions also impose a duty to adjudicate the application.
8. My petition along with the supporting documents were filed and received by USCIS on March 2006 and the USCIS requested the name check in April 05, 2006 from the FBI, where the NAME CHECK has been pending since then. I have made several efforts of attempt to secure adjudication of my petition, but in vain. I have been forced by the FBI & the USCIS to seek relief through Pro Se procedures through the District Court to pursue the instant action. I felt totally left behind and became victim of unfairness. Waiting indefinitely for an agency to arbitrary act cannot logically be an adequate alternative.
9. There are a number of steps that I have taken. I have clearly done everything and anything that I could possibly do, before of filing a mandamus, to resolve the problem. I attempted to resolve my situation in other ways, fax, letters, requests for assistance, telephone, but all in vain. The first step that I took was to make several inquiries in writing with the FBI and the USCIS when processing on my case has gone beyond the stated time, and I found out that the hold up was due to name check pending process. No resolution was reached; the next step was to write letters to the elected authorities, no positive outcome. There are several other efforts that have been taken to resolve my long pending petition. After months and months, there were still no actions on the case. These requests, actions and efforts that I made did not make any effect of prompting the FBI / or and the USCIS to take action.

(See attached Exhibit#1 through Exhibit#25)

10. Name check takes many months or even years in my specific case, and this goes on as the FBI reviews the personal information of the applicant. During that process, the USCIS informed my case is pending background checks and advises that nothing can be

done, but wait until such checks are turned back to USCIS. For that reason I am turning to the Federal Court to assert my right to a reasonable period of adjudication.

11. I have evidence of multiple attempts to resolve the case through traditional methods, such as Infopass and letters to the USCIS, Congressional inquiries...
12. Despite my dutiful, and diligent and continuous follow-up with FBI & USCIS throughout, are no closer to any resolution of my case, this is my woeful and sad tale. Although lengthy delays are most common to real hardship such as lost of employment, limited employment, travel permission so forth... This is painful and pervasive.
13. When a government agency acts improperly, the Court has broad discretion in designing an appropriate remedy suiting the needs of the plaintiff before it. It is clear, with no doubt that the District Court has power to craft remedial action specific to a given factual situation such my case.
14. Since the 14<sup>th</sup> Century, the common law has recognized a court's power to compel an official to take some action, which is the official's power and duty, through a writ of mandamus. In modern times, a U.S. District court may issue a writ of mandamus, base on the mandamus act, APA & INA ordering a government agency or official to make a decision on an application pending before it.
15. In other words, federal law provides people with a legal action that can be used to compel administrative agencies such as (USCIS & the FBI) to do what they are legally *required* to do. What is USCIS "required" to do? In this specific case, and generally, they are required to adjudicate IMMIGRATION cases within a "reasonable" time.
16. In conjunction with 28 U.S.C. Â§ 1331 (federal question jurisdiction) and 28 U.S.C. Â§ 1361 (mandamus jurisdiction), the federal courts possess the necessary jurisdiction to entertain actions brought by private individuals against the U.S. Government to compel the government to adjudicate the application before it within a more reasonable timeframe.
17. I am again seeking relief through mandamus under 28 U.S.C. § 1361 (the Mandamus Act), 5 U.S.C. § 551, (the Administrative Procedures Act, "APA"), and 28 U.S.C. § 1331., directing the United States Citizenship and Immigration Services (USCIS) and the Federal Bureau of Investigation (FBI) to process the necessary background checks in order to adjudicate my long pending I-485, pending nearly 2.5 years, which is unjust, unlawful and a perfect violation of their obligations under the Law of the United States.
18. I am claiming with full respect to the Law of the United States that the Court has subject matter jurisdiction under both the mandamus statute, 28 U.S.C. § 1361, and the federal question statute, 28 U.S.C. § 1331.<sup>2</sup> Under § 1361 the Administrative Procedures Act ("APA"), 5 U.S.C. § 551
19. The district court shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.
20. I filed this civil action *pro se* under the Administrative Procedures Act ("APA"), 5 U.S.C. § 706(1), and the Mandamus Act, 28 U.S.C. § 1361, to compel the defendants the USCIS & the FBI to take action on my I-485 application for adjustment of immigration status to

lawful permanent resident, there has been an unlawful withholding or unreasonable delay of the agencies action, by FBI national name check program; and the USCIS / Texas Service Center..

21. As an agency of the United States, however, USCIS is subject to the Administrative Procedures Act (APA), which requires that "with due regard for convenience and necessity of the parties . . . within a reasonable time, each agency shall proceed to conclude a matter presented to it. . ." More important, the APA empowers the federal courts to "compel agency action unlawfully withheld or unreasonably delayed
22. The federal question statute, 28 U.S.C. § 1331, provides the District Court with jurisdiction over an APA suit. The APA provides the Court with a cause of action for unreasonable agency delay. Moreover, § 555(b) requires that agency matters be resolved within a reasonable time. A violation of this duty is a sufficient basis for mandamus relief. Meaning, the APA provides a basis for Mandamus when the government unreasonably delays action or fails to act under the Law.
23. Basically, where the government provides a fee-based service, the payment of such fees by a private individual imposes a duty upon the government to provide the service(s) promised within a reasonable period of time. Of course, whether the delay is reasonable or not depends on the context of the benefit requested, in my case the delay is purely unlawful and unreasonable.
24. Also, compelling factors related to an individual applicant's circumstances may sway a federal court in favor of entering an order against the government. Generally, anything more than two years' delay on an adjustment of status application is real unreasonable delay enough to bring a mandamus action on such applications.
25. A refusal to adjudicate the application would be a "refusal to perform assigned duties" under the Law. The agency would have discretion to determine the time and manner, in which my application should be adjudicated, but choose to make no determination at all, that inaction is a refusal. If the court were to hold otherwise, USCIS could withhold a decision indefinitely
26. I have been unable to obtain legal permanent residence, travel, and work without restriction, fully integrate the society and **accrue time to be eligible for naturalization** as a citizen of the United States of America, Loss of employment and employment opportunities where the position requires green card status or U.S. citizenship; Problems obtaining drivers' licenses; Inability to qualify for certain federal or state grants and funds; Limitations on the ability to purchase property or to refinance; Difficulty obtaining credit and student loans; Disqualification from in-state tuition; and Delay in obtaining full citizenship rights, most notably the right to vote..
27. I live in the Great state of California, which makes it even more difficult to visit the Texas Service Center. I have real and pressing need for relief.

28. The FBI & the USCIS, in perfect violation of the administrative procedures act, are unlawfully withholding action on my application and has failed to carry out the adjudication functions delegated to them by Law with regard to my case.
29. This unreasonable and untenable situation of delays, are unacceptable and should not be tolerated, and that situation is currently putting my whole life on indefinite hold and in total limbo, leave me defenseless with no hopes for remedy. The United States of America prides itself on justice but the FBI and USCIS undermine the legal immigration system in the efficiency and fairness in accordance with the Law of this Great Country. I am a Long-time legal resident, father of two (2) U.S Citizen Kids, with excellent moral character, with strong ties to the community and the continental U.S as a whole, I paid taxes, and I am a Law abiding person, and desperately want to become full-fledged members of the U.S. society, obtain full eligibility; and I am subject to indefinite delays, no one can justify, and with no other available remedy, except waiting indefinitely. Such manners of conducting business are unlawful, unjust and senseless.
30. The FBI & USCIS offer no specific reason for this long delay and offer no other adequate remedy; and no other adequate remedy exists at this point, except referring the matter to the District Court that I truly and strongly believe has full jurisdiction. The real reason of the pending and the delay still is a mystery. I never committed any crime and have never been in trouble with the Law. I requested in many occasions for a FOIA (Freedom of Information Act) from the FBI, they replied with a "no record found".  
(See attached Exhibit#26 through Exhibit#27)
31. I am not seeking any preferential treatment but rather FBI to take action as delegated to its agency. I am aggrieved, I strongly believe that my legal right is denied by FBI national name check program; it has a legal duty to conduct the process of my application and abstains from doing it. The FBI failed to process my FBI name check for nearly 2.5 years since the USCIS requested the check in April 05, 2006. My file sent to the National Name Check Program from USCIS, the file has been pending under the jurisdiction of the Justice Department, FBI name check program, nearly 2.5 years.
32. I have exhausted all administrative remedies, I properly filed an application I-485 (to register permanent resident or to adjust status), and I have supplied the USCIS documents that clearly establish my eligibility to register permanent resident or to adjust status and paid proper fees, my fingerprints were captured at the application support center, and electronically sent to the FBI for process, pursuant to section 245 of the immigration & naturalization Act.
  - (1) I have a clear right to the relief requested; the INA establishes a clear right to relief for adjustment of status applicants a right therefore I have a right to have my application adjudicated.
  - (2) The FBI and USCIS in their joint effort to have a clear duty to perform the act in question; and the actions of the relief that I am seeking can be used to compel the government to exercise its discretion in a case where the government has failed to take any action. The Court should distinguish between the government's duty to take *some* discretionary action and the actual discretionary decision that the government makes

I am not asking the court to instruct an official how to exercise discretion however that official has ignored or violated statutory or regulatory standards delimiting the scope or manner in which such discretion can be exercised.

(3) No other adequate remedy is available to me.

I have no alternative, no adequate remedy available. I have exhausted all administrative remedies. Waiting for background check to clear in such way that the FBI is conducting its business is no remedy at all.

33. Spending 4 to 8 years on a person's name check and hold tens of thousands innocent families in limbo for unlimited years, is unjust and unlawful. It is highly unethical to put someone's livelihood in Limbo forever, without any other possibility of remedy options. FBI will never process background checks in a consistent timely fashion, unless forced to do so by the Court.
34. The USCIS & the FBI have sufficient information that determined my eligibility; they have sufficient time during the (2.5 years) of pending process, pursuant to applicable requirements and complete the processing procedures for all required background checks.
35. The USCIS & the FBI willfully and arbitrary delayed my case, and unreasonably inappropriately refused to adjudicate the petition, thereby depriving me of the rights to which I am entitled
36. Why is an FBI name check required for an 11 years legal resident who has already undergone at least one and often two prior name checks?
37. The FBI & USCIS have never indicated when they expect my name check to be completed and the applications to be adjudicated. For the Court to reject my informal brief would strip me of any meaningful relief. The matter would in all likelihood continue to languish for years more and more.
38. The delay is simply unreasonable, that lack of action has caused in the adjudication of my application, and how this inaction has impacted my life.
39. The February 4, 2008 USCIS memorandum, "Revised National Security Adjudication and Reporting Requirements," states that after a FBI fingerprint and IBIS check have been completed and the FBI name check request has been pending for more than 180 days, *the adjudicator shall approve the application and proceed with the card issuance.* This new procedure will apply to Applications for Adjustment of Status (I-485); Applications for Waiver of Ground of Inadmissibility (I-601); Applications for Status as a Temporary Resident Under Section 245A of the Immigrant and Nationality Act (I-687), or Applications to Adjust Status from Temporary Permanent Resident (Under Section 245A of Public Law 99-603) (I-698). USCIS has also issued a Q & A designed to respond to questions regarding the new policy. The Q & A states, for example, that USCIS anticipates that the majority of the approximately 47,000 adjustment of status cases currently delayed by name checks will be processed by mid-March 2008.

40. Moreover, the February 4, 2008 USCIS memorandum on FBI name check procedures does provide a timeframe in which USCIS should adjudicate certain applications. The memo states that USCIS shall immediately approve certain applications, including adjustment applications, if the application is otherwise approvable and an FBI name check request has been pending for 180 days. This stated agency policy recognizes a duty to complete certain applications within a certain time period. The USCIS' policy outlined in the memo reflects USCIS' intention to adjudicate certain applications within 180 days from the date that a name check request is received by the FBI. The memo provides that the USCIS adjudicator "shall approve" the pending application and "shall proceed" to issue the appropriate card 180 days after the request is received. The language of the memo acknowledges USCIS' understanding of its duty to adjudicate certain applications, even in instances where the name check is not complete.

(See attached Exhibit#29)

41. While the agency has an independent duty to adjudicate applications under the INA, its implementing regulations and the APA, the February 4, 2008 memo provides additional evidence of USCIS' recognition of this duty. USCIS did not honor its commitment neither keep its promises.

42. On April 2, 2008 U.S. Citizenship and Immigration Services (USCIS) and the Federal Bureau of Investigation (FBI) announced a joint plan to eliminate the backlog of name checks pending with the FBI. USCIS and the FBI established a series of milestones prioritizing work based on the amount of time a name check has been pending. They promised to process all name check pending more than 2 year by July 2008: They did not honor their commitment neither keep their promises.

(See attached Exhibit#30)

43. On July 1, 2007 USCIS increased its fees. USCIS made clear that the reason for the increase was to insure that the adjudication fee covered the full cost of adjudicating an application with a speedy process. It is untenable for the government to charge a \$905 fee for adjudication costs of each adjustment application and then to argue it has no duty to adjudicate a properly filed application, before all background checks received. If USCIS can waive any interview for any purpose, if USCIS can speed up any application as they choose to, I believe that USCIS inaction and the FBI failure to conduct its assigned duties under the Law are the hold up on my case.

44. Despite unprecedeted and massive recent fee increases, despite the FBI & the USCIS joint effort to clear name check backlog, despite all the promises over and over, they choose to remain incapable of processing applications for permanent residence within a reasonable time. Their inaction constituted a refusal to conduct a lawful and mandatory duty assigned to them under the Law to their obligation.

45. On numerous occasions, I appeared at info pass before the USCIS San Francisco District Office, I wrote the Congresswomen in my district, the U.S ombudsman, I wrote many letters to the director of USCIS / Texas service center, I sent many e-mails to the Director of FBI, the Director of FBI / NNCP, the USCIS Head Quarter, the White House (the President, the Vice President, the First Lady, the National Security advisor)...

I laid out the facts of the case to USCIS via different kinds of correspondence, including efforts that I have been taken to resolve it. I enclose and send copy of the complaint to the USCIS office handling the case, to the FBI name check program, along with a letter explaining the situation and the case was still not resolved within a certain period,

46. They unanimously and consistently informed that the FBI had not yet completed my background checks, and therefore the USCIS was unable to adjudicate or approve the case, main reason for the hold up. The case is held in abeyance upon completion of the FBI background checks. I desperately resubmitted inquiries to the same mentioned agencies in order to inquire information up date about the status of my case, and was again told that my case is pending the FBI NAME CHECK, and would still be pending at a southern adjudication center in Texas, and until the FBI NAME CHECK clears, the pending process could take several months, to many, many years.
47. The current FBI name check program only allows a very few applicants to "pass" at the expense of another applicant who will be moved several spaces backward (without notice), generating an indefinite backlog. I strongly feel that I deserve relief that will promptly lead to adjudication of my petition.
48. It is simply unacceptable to require an Asylee to wait several years for action on a permanent resident petition. I have some real and pressing need for relief.
49. delivery of permanent resident card, eliminating the long pending FBI name check. On February 4, 2008, when USCIS circulated an Interoffice Memorandum issuing revised guidance on the background check procedures for Applications for Adjustment of Status (I-485), USCIS did not honor its commitment neither keep its promises.  
 (See attached Exhibit#30)
50. USCIS did not honor their commitment neither keep their promises. USCIS should be held accountable by this Court as far as my application is concerned and affected, for not respecting its own formal policy (enclosed with instructions), which is a Legal Document. The effect of broken promises is resentment, undue anxiety, missed opportunities and a lack of trust in future for the Agency. Broken promises also give a feeling of false competence; the FBI & the USCIS has kept me stuck in a mode of despairing and their delays are rarely associated with reasonable cause. The most successful government agency tends to value the agency to keep its word because it demonstrates integrity and justice - a key attribute for achievement. Finally, if not handled within the core value of the promise, broken promises can cause ill feeling, damage hopes and livelihood.
51. When an agency makes a promise, it reaches out into an unpredictable future and makes one thing predictable. When an agency makes a promise, it stretches itself out into circumstances that no one can control and controls at least one thing: it will be there no matter what the circumstances turn out to be. With one simple word of promise, an agency creates an island of certainty in a sea of uncertainty. Promises mean a lot to me because they suggest appreciation, hopeful relief concept and empathy and carry some pleasure in fulfillment of an agency, resolution to the indefinite pending process of my application.

52. When there is a definite pattern the FBI & the USCIS in breaking promises it reveals three (3) things:

- (1). That the person, such as me, to whom the promise is made or concerned, is not really a priority in the scheme of things; not as valued as others U.S Citizen, violation of the equal justice Act.
- (2). That the agency making the promise is trying to cover his inability to carry out his job requirements and responsibilities, as required by Law of the United States.
- (3). That the promise itself is not perceived as an important matter, enough to be kept, rather waiting for security checks to be completed regardless of the length of the pending process and its consequences.

53. The USCIS & the FBI have failed to properly adjudicate my petition. They have failed to adhere to their own regulation under the Law, and have improperly delayed the processing of my petition, after that I have submitted, nearly 2.5 years ago, a properly executed application. It has been nearly 2.5 years since I filed this I-485. Spending 4 to 8 years on a person's name check and hold tens of thousands innocent families in limbo for unlimited years, is unjust and unlawful; and is a bad business practice. It is highly unethical to put someone's livelihood in Limbo forever, without any other possibility of remedy options. FBI will never process background checks in a consistent timely fashion, unless forced to do so by the Court.

54. The USCIS & the FBI have sufficient information that determined my eligibility; they have sufficient time during the (2.5 years) of pending process, pursuant to applicable
55. The USCIS & the FBI willfully and arbitrary delayed my case, and unreasonably inappropriately refused to adjudicate the petition, thereby depriving me of the rights to which I am entitled. I wrote many e-mails, placed many service requests and inquiries through the USCIS toll free number. I am greatly damaged, my whole life put on hold by the failure and mismanagement of the FBI & the USCIS to act in accordance with their duties under the Law.
56. I am an Alien who has been approved for asylum and I did already undergo to the appropriate security and FBI background checks associated with grant of asylum. My application is made in good faith.
57. Just for the record: I have been for 11 years in the asylum process, spent more than \$20,000 in Lawyers fees from the Asylum Office proceeding, to immigration judge, to the Board of Immigration Appeal, to the Great 9<sup>TH</sup> Circuit Court ... FROM 1988 to 2008.
58. I filed for asylum in 1998, did not get approved until later in March 2005 by the Great 9<sup>TH</sup> circuits court of San Francisco. The FBI name check requested by the USCIS through the FBI for permanent resident application, filed since March 24, 2006, Case is still pending, due to indefinite name check.
59. The FBI & the USCIS, in perfect violation of the administrative procedures act, are unlawfully withholding action on my application and has failed to carry out the adjudication functions delegated to them by Law with regard to my case.

60. The FBI & USCIS are abandoning the United States of America tradition of treating everyone fairly under the law, resulting in harsh consequences for asylee families and immigrant communities. The longer the executive, such as the District Court allow harsh, inequitable, un-American treatment to prevail in our immigration system, the more difficult it will be to restore the system's integrity and legitimacy. This unreasonable and untenable situation of delays, are unacceptable and should not be tolerated, and that situation is currently putting my whole life on indefinite hold and in total limbo, leave me defenseless with no hopes for remedy. The United States of America prides itself on justice but the FBI and USCIS undermine the legal immigration system in the efficiency and fairness in accordance with the Law of this Great Country. I am a Long-time legal resident, father of two (2) U.S Citizen Kids, with excellent moral character, with strong ties to the community and the continental U.S as a whole, I paid taxes, and I am a Law abiding person, and desperately want to become full-fledged member of the U.S. society, obtain full eligibility; and I am subject to indefinite delays, no one can justify, and with no other available remedy, except waiting indefinitely and just waiting indefinitely. Such manner of conducting business is unlawful, unjust, senseless and irresponsible.

61. The FBI & USCIS offer no specific reason for this long delay and offer no other adequate remedy; and no other adequate remedy exists at this point, except referring the matter to the Court that I truly and strongly believe has full jurisdiction. The real reason of the pending and the delay still is a mystery. I never committed any crime and have never been in trouble with the Law. I requested in many occasions for a FOIA (Freedom of Information Act) from the FBI, they replied with a "no record found". Since March 2006, the I-485 and other benefits are stuck on hold awaiting FBI name checks. The delay is extremely pervasive, inhuman, frustrating, and the refusal of agencies to say when checks will be done or why problems have arisen, is just irresponsible and cruel.

62. I have waited for nearly (2.5) years for his FBI check, possibly because the bureau since 2001 has intensified the scrutiny of immigrants with such name like mine: In frustration, I submitted again a Freedom of Information Act request for any records the FBI might have on me. The bureau promptly replied again that it had none, no matching against me: No Record Found, meaning no match of any criminal record, matching either my full name, date of birth or any other factor of my personal identity information. "If they can issue such conclusive status report on me, why can't they report back to USCIS that their record and information show no record found or matching my identity?"

63. I seek this Writ because I am aggrieved and felt violated; the FBI & USCIS have unreasonably delayed in processing my adjustment of status Application. I strongly believed that this Court has jurisdiction over my claims in the Complaint under both the Mandamus Act and the Administrative Procedures Act. No offer on any kind of explanation on why they have not made a decision yet on my petition for the past 2.5 years, besides Name checks still pending. Waiting 4 to 8 years for name check to be processed or waiting for security checks to be completed is not an adequate remedy.

## D. PRAYER FOR RELIEF:

1. Emergency consideration of this Petition with an exceptional expedited response time for Respondents to respond to this Petition and an absolute expedited time for the Court to hear the merits of this matter.
2. Such other and further relief as the Court deems just and proper to protect the constitutionally protected rights of a Pro Se Petitioner.
3. I demonstrate "(1) the presence of significant questions of law; (2) the inadequacy of other available remedies; and (3) the presence of a legal issue whose resolution will aid in the administration of justice
4. The FBI & USCIS have never indicated when they expect my name check to be completed and the Applications to be adjudicated. Remanding the matter to the USCIS and the FBI without a strict timetable and appropriate instructions would strip me of any meaningful relief for ever. The matter would in all likelihood continue to languish for years more and more or indefinitely. It would leave me exactly, vulnerable, defenseless, depressive and put me right where I was before I filed this lawsuit for the purpose of seeking relief, with no indication of when, if ever, FBI and USCIS will complete my name check, and when after that, if ever, USCIS will adjudicate my Application. Waiting indefinitely for security checks to be completed is not an Adequate Remedy. Therefore, if the Court decides to remand this case back to USCIS and FBI, I am respectfully requesting that the Court set a strict timetable requiring action by both USCIS and FBI, **as following:**

**(1\*). I know based on the replies of my inquiries that FBI security checks are causing the delay, and I am therefore naming the FBI and the USCIS as defendants. I am respectfully for that reason asking the court to order both to complete the investigation of the petition and process my application or petition no later than 30 days form the day of the Court order.**

(See attached Exhibit#09 - Exhibit#10)

**(2\*). I am respectfully and specifically asking that the court order USCIS to adjudicate my petition within 30 days limit, and proceed with card issuance, based on the legal document Memo of policy change of Michael Aytes, Associate Director, Domestic Operations; subject titled: "Revised National Security Adjudication and reporting requirement"; since USCIS choose not to honor their commitment neither keep their promises. USCIS should reassess the continuation of its formal policy (see Section of the policy), I quote <<Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the 1-485, and proceed with card issuance>>.**

**(3\*). I am also respectfully asking the court to fully maintain jurisdiction over the action on this matter even after granting the mandamus and remanding so that the Court can fully enforce its order. I am requesting that the court require USCIS to periodically update the court about its progress during the 30 days court order and 30 days ONLY.**

5. The Administrative Procedures Act ("APA") at 5 U.S.C. § 555(b) requires federal agencies to act in a timely manner. It provides, in pertinent part: "...With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. ...". It includes judicial review to "compel agency action unlawfully withheld or unreasonable delayed." I am blaming poor coordination and mismanagement at the FBI and the immigration service, and the inefficient methods of screening files for genuine security threats. Anybody seeking safe heaven in a country, and has been living in a country permanently and continuously with his family, over 11 years, has no interest harming that country.
6. USCIS should request immediately from FBI an expedited processing of my background checks; no more than 30 days following the Order of this Court
  - FBI should complete the background check and send it back to USCIS as soon as possible but not later than the same 30 days following the Order of this Court;
  - USCIS should adjudicate my Application as soon as possible but not later than the same 30 days following the Order of this Court, and report the decision to both, myself and to this Court.
  - USCIS should adjudicate and mail my permanent resident card to the address it has on file 30 days following the Order of this Court.

Respectfully submitted,

Signature:  s/ Mamadou Ndom  
Petitioner

*Pro Se*  
(In Proper Person)

220 - 13<sup>th</sup> ST.  
Vallejo, Ca 94590

MAMADOU\_NDOM@YAHOO.COM

July 24, 2008  
Date

(707) 642 4811 - Home

(415) 581 3614 - Work

To help the Court identify information about me in the USCIS & FBI record systems and / or programs, I am providing the following identifying information:

Full name: **Mamadou Ndom**  
Date of Birth: **July 4, 1975**  
Place of Birth: **Ziguinchor, Senegal**  
Alien Number: **A 76-858-149**  
Receipt # of the petition: **SRC 06 136 52831**  
Federal Agency : **USCIS - Texas Service Center**  
(where case is pending )

Place of Residence:

- Oakland, California 94606
- Richmond, California 94805
- Vallejo, California 94590

My Current Address: **220 – 13<sup>TH</sup> ST.**  
**Vallejo, Ca 94590**

Home Phone: **707-642 4811**

Work Phone: **415-581 3614**

Pursuant to 28 U.S.C 1746, I certify under penalty of perjury that the foregoing is true and correct that I am requesting assistance on my case processing.

Respectfully Yours

MAMADOU  
NDOM



Date: July 24, 2008

MAMADOU NDOM  
220 - 13<sup>TH</sup> STREET  
VALLEJO, CA 94590

*EXHIBIT 1*

January 07, 2007

To: Michael A. Cannon  
Chief, National Name Check Program Section  
Records Management Division

Re: **Name check /**

Dear Mr. Cannon,

I truly need your reply on a matter of concern.  
I would be extremely appreciative if you provide me the status of my name  
check or any estimate time of processing.  
I would be most grateful to your efforts on this most important matter.  
Again thanks for your prompt attention to my request.  
I will be looking forward to hearing from you.

I am providing the following identifying information.

Full Name: Mamadou Ndom  
Alien #: A 76 858 149  
DOB: 07/04/1975  
Address: 220 13th st, Vallejo, Ca 94590

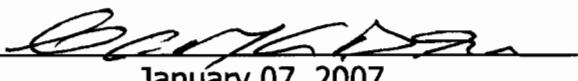
Again many thanks

Respecfully yours.

Mamadou  
Ndom

Respectfully Yours

MAMADOU  
NDOM



January 07, 2007

MAMADOU NDOM  
220 - 13<sup>TH</sup> STREET  
VALLEJO, CA 94590

December 15, 2007

To: Michael A. Cannon  
Chief, National Name Check Program Section  
Records Management Division

Re: **WH610030 - Name check /**

Dear Mr. Cannon,

On October I received a written reply from your office, acknowledging reception of inquiry from President Bush in regards to my name check inquiry, stating that my name check was currently in process. Thanks for taking the time to give me the opportunity to receive such status report, knowing how overwhelming the current work load of your office is.

I am respectfully requesting your assistance, within the state of possibility, in order for my case to finally meet the deserving and favorable results. It has been nearly two (2) years since I Filed a Petition for **Permanent Resident** with **USCIS**, and only the Security Check has been putting my case on hold.

Please note: I had never been in any kind of trouble with the law I underwent the experience of unnecessary delays before (Full 10 years) and I had such valid reasons this time that I deserved a break. I made sincere efforts to be and to remain a consistent law-abiding individual, I am conscientious, caring, hard-working family guy; and I have exhausted all avenues of requests for assistance relating to my case. This is very emotional and heart breaking, I love this country, and I have two (2) us born citizens, currently on kindergarten and pre-school. This country is a save heaven; a sanctuary for me. What else can I say?

There are times, under the right conditions, when a good cry is the best remedy; then I cry and remain patient.

I would like to reiterate my strong and wishful interest in seeing my name being cleared as quickly as possible; **my wish is to visit my sick mother as soon as possible, as we were separated more than 10 years ago.**

**Can I please have an update on my name check inquiry, or have an estimate time of process?**

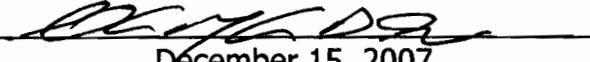
I want to thank you for the expression of assurance mentioned in your previous reply.

I would definitely be appreciative of any handling in regards to my name check clearance process.

Again many thanks.

Respectfully Yours

MAMADOU  
NDOM



December 15, 2007

MAMADOU NDOM  
220-13<sup>TH</sup> STREET  
VALLEJO, CA 94590

June 11, 2007

To: Evelyn Upchurch / or To Whom It May Concern  
Re: **SRC 0613652831**

*Exhibit 3*

Dear District Director,

I Filed a Petition for **Permanent Resident** with the **USCIS**; the petition was later transferred to the Texas Service Center.

The case has been out of processing time over 15 months, due to some USCIS internal and administrative standard processing.

I wrote this office before and received reasonable reply, which I am grateful and very appreciative of it.

I am writing you now, because my Biometric is expiring, in addition, I have exhausted all avenues of requests for assistance through the TSC, and by all due respect, I am determined to announce you that my life is being put on hold.

My latest e-mail inquiries revealed that my case was in transit to a Document Division Officer and will be adjudicated very soon.

I am now requesting for assistance within the state of possibility in order for my case to finally meet the deserving and favorable results.

I'd be grateful if you could look into my situation, and any assistance would be deeply appreciated.

In an event that I have to re-do <<**Biometric**>>, or submit evidence, I would love to welcome such request or Bio. Appointment as soon as possible.

Respectfully Yours

MAMADOU  
NDOM



MAMADOU NDOM  
220-13<sup>TH</sup> STREET  
VALLEJO, CA 94590

November 17, 2007

The Honorable Condoleezza Rice  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, DC 20520

Exhibit A

Re: FBI name check Delays

Dear Secretary Rice,

I am respectfully requesting your assistance, within the state of possibility, in order for my case to finally meet the deserving and favorable results. It has been nearly two (2) years since I Filed a Petition for **Permanent Resident** with **USCIS**, and I am fully **eligible** for the benefit that I have filed. These case problems usually cannot be self-corrected.

I had never been in any kind of trouble with the law I underwent the experience of unnecessary delays before (Full 10 years) and I had such valid reasons this time that I deserved a break. I made sincere efforts to be and to remain a law-abiding individual, I am conscientious, caring, hard-working family guy; and I have exhausted all avenues of requests for assistance relating to my case.

There are times, under the right conditions, when a good cry is the best remedy; then I cry and be patient.

I contacted the USCIS regularly and receiving very inconsistent and conflicting answers for one reason or another: I was told that my security check / FBI name check is pending or actively in process.

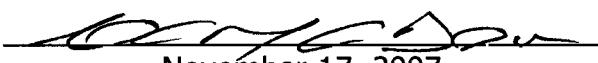
I'd be grateful if you could look into my situation, and please request for an expedite case processing, / or and any other kind of assistance would be deeply appreciated.

I would definitely be appreciative of any handling in regards to my name check clearance process.

Again many thanks.

Respectfully Yours

MAMADOU  
NDOM

  
November 17, 2007

MAMADOU NDOM  
220-13<sup>TH</sup> STREET  
VALLEJO, CA 94590

July 21, 2007

To: Evelyn Upchurch

Re: **SRC 0613652831 / Loss of Benefits**  
**A 76 858 149**

Dear Madam

I have a pending Petition for **Permanent Resident** with the **USCIS - Texas Service Center**. Re # **SRC 0613652831**

I am writing this office now, because I passed the Civil Service Examination and I ranked # 1. I am afraid I may lose that benefit.

This is an employment opportunity of the City and County of San Francisco, class 8228 Museum Supervisor, the position encloses several great benefits, great paying job.

Please, conduct your own inquiry in regards to that matter.

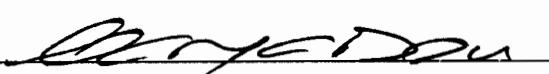
Part of the appointment process requires proof of legal presence in the United States. I tried to obtain an expedited work authorization, but the service center does not provide such document anymore.

I already showed a copy of the Grant of Asylum, my Refugee Travel Document, however the appointment is a City and county job, and therefore the permanent resident card appeared to be the main required legal document.

I am really requesting for assistance within the state of possibility for my case to be approved as soon as possible. I am really running out of time. I'd be grateful and any assistance would be deeply appreciated

Respectfully Yours

MAMADOU  
NDOM



MAMADOU NDOM  
220 13<sup>TH</sup> ST  
VALLEJO, CA 94590  
707-642 4811

April 28, 2008

*EXHIBIT 6*

First Lady Laura Bush  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear First Lady Laura Bush:

My name is Mamadou Ndom, I am writing you because of my motivation and hope in "how we reach out to someone that we think can give us answers, assistance or reassurance and I am begging you to act through the charity of your heart for assistance and I assure you I am worthy and deserving of any help you render. I have never been hurt and desperate.

I am writing this letter to you with a request to kindly please help in expediting my background check with the FBI, which has been pending for more than 2 years; and I have been overall consistently in the immigration delay for **13 long years**, due to background checks, and still waiting, waiting for my file to be touched...

I would really appreciate if you would spend some of your valuable time to contact FBI and help in expediting my case. I do understand that under current circumstances, Homeland Security is of primary importance, but all I am asking for, is an opportunity for someone to look into my case. My details are as given as attached. If anything else is required from my end, I will be more than happy to provide the information.

I feel worthy of asking for assistance in regards to my case: I am greatly in need of such assistance the wait is long, painful on my family as a whole, I lost so many benefits due to such delay, and a close mouth doesn't get fed, I am seeking for help.

With the renewed expression of true sympathy, I remain, dear First Lady, Your admiringly supporter.

I look forward to hearing from you.

Sincerely,

Mamadou Ndom 

MAMADOU NDOM  
220-13<sup>TH</sup> STREET  
VALLEJO, CA 94590

*EXHIBIT 1*

January 15, 2008

His Excellency, Mr. the Honorable George W. Bush

Dear Mr. the President,

I wrote the **White House** seven (7) months ago (on May 29, 2007), and received a beautiful written reply expressing real hopes. I always will be grateful to that reply. Summarizing my situation which is a Humanitarian Circumstance, Dear Mr. the President:

I Filed a Petition for **Permanent Resident** with the **USCIS**, and I am fully **eligible** for the benefit that I have filed.

The case has been out of processing time for so long, due to **FBI Name Check**, the delay of my case is very painful on my family, depressive and putting my whole life on hold.

**History:** 11 years ago, as a refugee from Senegal, I got separated with my family currently living in Gambia. My mother has several strokes and is now partially paralyzed, has one wish, which is to see me for the last time before she dies; and she is very sick.

I had never been in any kind of trouble with the Law; I am a Law-abiding person, father of two (2) US citizen children, live in the same area for 11 years, and I believe in this **Great Country**.

I called the FBI and I was instructed to directly contact USCIS to send an expedite request. Speedy name check requests are accepted by the FBI through US government Agencies only and there is a huge backlog for the name check pending process.

I cannot wait for that, and if I leave the country I will never be allowed to re-enter the US.

I am well aware that my request was forwarded to the DOJ that I want to express my gratitude, respect and admiration.

I am now requesting for assistance for an **Expedited Name Check Processing** with the FBI (NNCP). I'd be grateful if you could look into my situation / or and any assistance would be deeply appreciated.

Respectfully Yours

MAMADOU NDOM  
220-13<sup>TH</sup> STREET  
VALLEJO, CA 94590

December 04, 2007

To: Michael A. Cannon  
Chief, National Name Check Program Section  
Records Management Division

Re: **WH610030 - Name check /**

Dear Mr. Cannon,

On October 15, I received a written reply from your office date October 4, acknowledging reception of inquiry from President Bush in regards to my name check inquiry. Thanks for taking the time to give me the opportunity to receive such status report, knowing how overwhelming the current work load of your office is, I am well aware.

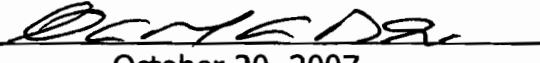
I would like to reiterate my strong interest in seeing my name being cleared as quickly as possible; I want to thank you for the expression of assurance mentioned in your reply.

I would definitely be appreciative of any handling in regards to my name check clearance process.

Again many thanks.

Respectfully Yours

MAMADOU  
NDOM

  
October 20, 2007

MAMADOU  
NDOM

A handwritten signature in black ink, appearing to read "MAMADOU NDOM". The signature is fluid and cursive, with some loops and variations in letter form.



OFFICE OF THE VICE PRESIDENT  
WASHINGTON

November 29, 2007

*Cheney 8*

Dear Mamadou:

Thank you for contacting Vice President Cheney for assistance in dealing with an agency of the Federal government. The Vice President has asked me to respond.

We are forwarding your matter to the Department of Homeland Security. That agency will review the facts and either start a case, reopen your old case, or explain their previous decision on your former case, as applicable. We have requested that they respond directly to you with a copy to us for our files, and we expect this to be done at the earliest possible opportunity.

Thank you for contacting the Vice President.

Sincerely,

*Jenny Rose Folsom*

Jenny Rose Folsom  
Special Assistant to the Vice President  
for Correspondence

Mamadou Ndom  
220-13th Street  
Vallejo, California 94590



**U.S. Department of Justice**

Federal Bureau of Investigation

Washington, D. C. 20535-0001

WH 610030

October 4, 2007

Mr. Mamadou Ndom  
220-13th Street  
Vallejo, CA 94590

Dear Mr. Ndom:

Your letter dated May 1, 2007, directed to President Bush concerning your name check status for immigration purposes, was forwarded to the Department of Justice and subsequently referred to the Federal Bureau of Investigation (FBI) for reply. Your letter also enclosed a copy of our response to your Freedom of Information-Privacy Acts (FOIPA) request.

The processing of a FOIPA request differs from the processing of an FBI National Name Check Program (NNCP) record review. While both FOIPA and NNCP process requests through an automated or manual check of the FBI's Central Records System Universal Index (UNI) of over 90 million files, the scope of the searches for these two programs differs. The difference in searches reflects the distinct purposes of the two programs.

FOIPA provides copies of FBI files relevant to a FOIPA request. For FOIPA, the FBI search uses the name or information as provided in the FOIPA request. A FOIPA search determines whether there is an investigative file associated with an individual. This is called a "main file" search.

The NNCP conducts a search to identify any information contained in FBI records that may be associated with an individual and provides the information to another government entity. In an effort to ensure our national security, we use various combinations of the name, which can result in several "hits" on an individual that must be reviewed, whereas a search conducted under FOIPA results in no responsive records.

The NNCP conducts both a "main file" and a "reference" search. A reference is someone whose name merely appears in an FBI file or investigation. For NNCP checks, in each instance where UNI has identified a name variation or reference, an FBI analyst must review the information to determine whether it is applicable to the individual in question. This thorough vetting of a name can consume considerable time.

Mr. Mamadou Ndom

A review of the FBI's Name Check Program database revealed that your request was received from the United States Citizenship and Immigration Services on April 5, 2006, and is currently in process.

The FBI processes millions of name check requests each year with each requiring thoughtful consideration. We know how important this information is to you; however, the FBI must also balance the need for national security in preparing the response to each of these requests. The FBI's homeland security mission requires that our name check process be primarily focused on an accurate and thorough result. While an exact date for completion of this review cannot be given, you may be assured that the results will be made available to the immigration authorities as quickly as possible.

I trust this information will be of assistance.

Sincerely,



for Michael A. Cannon  
Section Chief  
National Name Check Program Section  
Records Management Division

**U.S. Department of Homeland Security**  
 U.S. Citizenship and Immigration Services  
 Domestic Operations Directorate  
 Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

HQCIS 181/48.2.1-C

DEC 14 2007

*Exhibit 10*  
 Mr. Mamadou Ndom  
 220 13<sup>th</sup> Street  
 Vallejo, CA 94590

Dear Mr. Ndom:

Thank you for your letter dated November 10, 2007, to Vice President Cheney concerning the status of your Form I-485, Application to Register Permanent Residence or Adjust Status. Vice President Cheney's office forwarded your letter to the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) for a response. We have assigned it case # 741808.

We understand the concern that prompted you to send your inquiry and appreciate your desire to resolve your immigration issue. We have researched your case to determine the status of your Form I-485. Our records reflect that the processing of your case has been delayed because the required investigation into your background is still in process. Until the background investigation is completed, we cannot move forward on this case.

Please understand that these background checks are required to be completed on all applicants who apply for adjustment of status. Attached you will find two enclosures with detailed information regarding why the process exists, how it works, as well as the circumstances when the process can be expedited.

While an exact date for completion of your background check cannot be given at this time, we will make every effort to make a decision on your case as soon as the background checks are completed.

We appreciate your continued patience and understanding. If you need additional assistance or filing instructions, we invite you to contact the USCIS National Customer Service Center at 1-800-375-5283 or visit our web site at [www.uscis.gov](http://www.uscis.gov).

We trust that this information is helpful.

Sincerely,

*Fairy D. White*  
 Fairy D. White, Supervisor  
 Customer Assistance Office  
 U.S. Citizenship and Immigration Services  
 U.S. Department of Homeland Security

Enclosures: Fact Sheet, Immigration Security Checks- How and Why the Process Works  
 USCIS Update, USCIS Clarifies Criteria to Expedite FBI Name Check

VP 247766

*Exhibit II*

Office of Communications  
U.S. Department of Homeland Security



U.S. Citizenship  
and Immigration  
Services

February 20, 2007

# USCIS Update

## USCIS CLARIFIES CRITERIA TO EXPEDITE FBI NAME CHECK

*Federal Litigation Removed as Sole Basis to Expedite Check*

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) is no longer routinely requesting the FBI to expedite a name check when the only reason for the request is that a mandamus (or other federal court petition) is filed in the case.

USCIS may continue to request an expedited FBI name check if the case meets one of the other approved criteria, including:

1. Military deployment,
2. Age-out cases not covered under the *Child Status Protection Act*, and applications affected by sunset provisions such as diversity visas,
3. Significant and compelling reasons, such as critical medical conditions, and
4. Loss of social security benefits or other subsistence at the discretion of the USCIS District Director.

The FBI name check is an invaluable part of the security screening process, ensuring that our immigration system is not used as a vehicle to harm our nation or its citizens. USCIS also requests an FBI name check to screen out people who seek immigration benefits improperly or fraudulently and ensure that only eligible applicants receive benefits.

Information about the FBI name check is available on the USCIS website at <http://www.uscis.gov> or by calling the USCIS National Customer Service Center toll free at 1-800-375-5283.

–USCIS –

On March 1, 2003, U.S. Citizenship and Immigration Services became one of three legacy INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.

THE WHITE HOUSE  
WASHINGTON

September 10, 2007

Mr. Mamadou Ndom  
220 13th Street  
Vallejo, California 94590

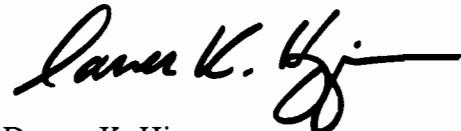
Dear Mr. Ndom:

On behalf of President Bush, thank you for your correspondence.

We are sending your inquiry to the Department of Justice. This agency has the expertise to address your concerns. They will respond directly to you, as promptly as possible.

The President sends his best wishes.

Sincerely,



Darren K. Hipp  
Special Assistant to the President  
and Director of Presidential Correspondence



## U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

OCT 15 2007

Mr. Mamadou Ndom  
 220 13th Street  
 Vallejo, CA 94590

Re: Appeal No. 07-2481  
 Request No. 1090435  
 KAH:CL

Dear Mr. Ndom:

This responds to your letter dated September 10, 2007. Although your letter mentioned a Freedom of Information-Privacy Act (FOIPA) request number assigned by the Federal Bureau of Investigation, you did not state that you are appealing from the FBI's action on that request. Rather, you requested this Office's assistance regarding your name check.

Please be advised that the principal administrative function of the Office of Information and Privacy is the adjudication of appeals from the denials of access to information pursuant to the Freedom of Information Act and the Privacy Act of 1974 by components of the Department of Justice. This Office does not have the authority to assist you with any matters related to the FBI's National Name Check Program (NNCP). Accordingly, I am closing your appeal file in this Office.

As a courtesy to you, I have enclosed two printouts from the FBI's Web site that address common questions related to the NNCP. Please note that these printouts clearly explain that only customer agencies, not individuals, may request expedited treatment of a name check. Therefore, "contacting Congressional representatives, the FBI's Office of Congressional Affairs, or the NNCP will only further tie up vital resources and will not contribute to the expediting of a name check" (see "Frequently Asked Questions" at 2). I trust that this information is of some assistance to you.

Sincerely,

Janice Galli McLeod  
 Associate Director

Enclosures



**U.S. Department of Justice**

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

SEP 28 2007

Mamadou Ndom  
220 13th Street  
Vallejo, CA 94590

Re: Request No. 1090435

Dear Mamadou Ndom:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on September 18, 2007.

The Office of Information and Privacy, which has the responsibility of adjudicating such appeals, has a substantial backlog of pending appeals received prior to yours. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number 07-2481. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. We regret the necessity of this delay and appreciate your continued patience.

Sincerely,

Priscilla Jones  
Supervisory Administrative Specialist

Office of the  
Citizenship and Immigration Services Ombudsman

U.S. Department of Homeland Security  
Mail Stop 1225  
Washington, D.C. 20528-1225



**Homeland  
Security**

December 3, 2007

Mr./Ms. Mamadou Ndom  
220-13th St  
Vallejo, CA 94590

Dear Mr./Ms. Ndom:

Thank you for your recent inquiry regarding your immigration issue.

Upon receipt of your information, the office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) initiated a formal inquiry with the U.S. Citizenship and Immigration Services (USCIS). USCIS should issue a response to you within forty-five (45) days. If you do not receive a response within this period, please notify our office.

Please be aware that although the office of the CIS Ombudsman collaborates with USCIS, it is an independent entity within the Department of Homeland Security (DHS). The office of the CIS Ombudsman is charged with assisting individuals who experience difficulties with the USCIS benefits process. Additionally, the office of the CIS Ombudsman is dedicated to identifying systemic problems in the immigration benefits process, and to recommending solutions to USCIS. Therefore, the concerns you raised in your letter will be considered as our office develops recommendations to improve USCIS' administrative practices.

Once again, thank you for contacting the office of the CIS Ombudsman, and for giving us the opportunity to serve you.

Sincerely,

Prakash Khatri  
Ombudsman

PIK/bh



**RE: New Policy / src 06 136 52831**

**From:** "TSC, ASYLUM" <asylum.tsc@dhs.gov>  
**To:** "NDOM MAMADOU" <mamadou\_ndom@yahoo.com>

Monday, March 31, 2008 6:23 AM

Your case is pending security checks.

**TSC Asylum Duty Officer.**

---

**From:** NDOM MAMADOU [mailto:mamadou\_ndom@yahoo.com]  
**Sent:** Sun 3/30/2008 11:26 PM  
**To:** TSC, ASYLUM  
**Subject:** New Policy / src 06 136 52831

Dear,

When the "New Revised FBI Name Check Policy", (for the I-485), will start being implemented for the eligible & approvable Asylum base cases in T.S.C ?

As we know employment base and family base have been commencing massive adjudications in light on the new USCIS policy, since MARCH 10th, 2008 in most of the Service Center, even in T.S.C.

What's the hold on the Asylum cases ?

**File: SRC 06 136 52831**  
**A 76 858 149**

Thanks.

M.

---

Like movies? Here's a limited-time offer: Blockbuster Total Access for one month at no cost.



Friday, November 9, 2007 7:45 AM

**RE: SRC0613652831**

**From:** "TSC, ASYLUM" <asylum.tsc@dhs.gov>  
**To:** "NDOM MAMADOU" <mamadou\_ndom@yahoo.com>

Your case is pending security checks.

**TSC Asylum Duty Officer.**

---

**From:** NDOM MAMADOU [mailto:mamadou\_ndom@yahoo.com]  
**Sent:** Thu 11/8/2007 9:31 PM  
**To:** TSC, ASYLUM  
**Subject:** SRC0613652831

Dear,  
Just inquiring about my case: SRC0613652831.  
Thanks.

---

Do You Yahoo!?  
Tired of spam? Yahoo! Mail has the best spam protection around  
<http://mail.yahoo.com>

RE: Important question. - Yahoo! Mail

Page 1 of 2

**RE: Important question.**

**From:** "TSC, ASYLUM" <asylum.tsc@dhs.gov>  
**To:** "NDOM MAMADOU" <mamadou\_ndom@yahoo.com>

Tuesday, March 11, 2008 6:19 AM

Mr. Ndom:

Your case is currently pending security checks and will be adjudicated accordingly once all security checks have been completed.

Sincerely,  
**TSC Asylum Duty Officer**

---

**From:** NDOM MAMADOU [mailto:mamadou\_ndom@yahoo.com]  
**Sent:** Mon 3/10/2008 4:45 PM  
**To:** TSC, ASYLUM  
**Subject:** RE: Important question.

Here you go: **src 0613652831**

"**TSC, ASYLUM**" <asylum.tsc@dhs.gov> wrote:

Please provide a receipt number for your case

**TSC Asylum Duty Officer.**

---

**From:** NDOM MAMADOU [mailto:mamadou\_ndom@yahoo.com]  
**Sent:** Sun 3/9/2008 7:50 PM  
**To:** TSC, ASYLUM  
**Subject:** Important question.

Dear,

I would be most grateful for your thoughts and advise on this most important matter.  
In connection with the "Revised New FBI Name Check Policy", and as to the content of the USCIS Web page; and toll free customer service information, it was indicated that we Must receive some sort of official statement from the Service Center by March 10, 2008: if our pending application falls into that category and fulfill all set requirements.

In response to Congressional inquiries, the USCIS HQ has indicated that my case seems to fall into that category. An FYI, I haven't heard or received anything yet.

I will appreciate it if you would indicate me some available Update or Guidance in regards to this new policy as taken dispositions or measures of processing.

Thanks in advance for the manner in which you would expedite such information to me.

You are to be recommended.

I will be looking forward to your response.

Yours truly.

M.

---

Never miss a thing. Make Yahoo your homepage.



EXHIBIT M

Monday, September 24, 2007 8:12 AM

**RE: case inquiry, SRC 0613652831**

**From:** "TSC, ASYLUM" <ASYLUM.Tsc@dhs.gov>  
**To:** "NDOM MAMADOU" <mamadou\_ndom@yahoo.com>

A76858149 is pending security checks. The case will resume adjudication after all required checks are completed.

**TSC Asylum Duty Officer.**

---

**From:** NDOM MAMADOU [mailto:mamadou\_ndom@yahoo.com]  
**Sent:** Sun 9/23/2007 11:36 PM  
**To:** Tsc, Asylum  
**Subject:** case inquiry, SRC 0613652831

Dear,

All my friends and acquaintances are approved now, except me !

- What's been holding my case ?
- Anything that I should know or do, to resume my case ?
- When can I expect approval ?

I hope I am not asking much but that case is more important than any thing in my life, and any explanation or help would be so totally appreciated.

Have a nice and peaceful day at work.

Many thanks.

Mamadou.

---

Be a better Heartthrob. Get better relationship answers from someone who knows.  
Yahoo! Answers - Check it out.



RE: SRC 0613652831

Monday, August 13, 2007 9:19 AM

**From:** "TSC, ASYLUM" <ASYLUM.Tsc@dhs.gov>  
**To:** "NDOM MAMADOU" <mamadou\_ndom@yahoo.com>

Your case is being held pending security checks.

TSC Asylum Duty Officer.

**From:** NDOM MAMADOU [mailto:[mamadou\\_ndom@yahoo.com](mailto:mamadou_ndom@yahoo.com)]  
**Sent:** Sun 8/12/2007 11:31 PM  
**To:** Tsc, Asylum  
**Subject:** SRC 0613652831

Dear,

Dealing with tons of emails a day, is not an easy task, however, we appreciate all the information that is been given via that email.

Thank you ALL for your true patience,

It is just some people's life like mine, has been pending. That's all.

Any hope !, when can I expect my case to be finally approved ?

SRCC0613652831.

Again Many Thanks.

Yours truly,

M.N

Sick sense of humor? Visit Yahoo! TV's [Comedy with an Edge](#) to see what's on, when.



RE: SRC0613652831

Friday, August 3, 2007 6:18 AM

**From:** "TSC, ASYLUM" <ASYLUM.Tsc@dhs.gov>  
**To:** "NDOM MAMADOU" <mamadou\_ndom@yahoo.com>

Mr. Mamadou,

Your case is undergoing a series of security checks (FBI name check, fingerprint check, etc.). After all checks have been completed, your case will be processed as quickly as possible.

Thanks for your patience,

**TSC Asylum Duty Officer.**

---

**From:** NDOM MAMADOU [mailto:mamadou\_ndom@yahoo.com]  
**Sent:** Thu 8/2/2007 10:13 PM  
**To:** Tsc, Asylum  
**Subject:** SRC0613652831

Dear Sir or Madam,

Two weeks ago, I sent a letter to the service center Director and still awaiting of a response. Yesterday, I was inquiring in regards to that by calling customer service. I then reached a customer service individual who stated that:

**<< based on the system that we put in place last April, I can tell you that you only have 37 days remaining before final and scheduled adjudication, you almost there ! >>.**

How accurate is that information ?

Thanks.

M.N

---

Got a little couch potato?  
Check out fun summer activities for kids.

**U.S. Department of Homeland Security**

Texas Service Center

P.O. Box 851488

Mesquite, TX 75185-1488

**U.S. Citizenship  
and Immigration  
Services**

Tuesday, February 13, 2007

MAMADOU NDOM  
220 13TH ST  
VALLEJO CA 94590

Dear MAMADOU NDOM:

On 12/28/2006 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

<b>Caller indicated they are:</b>	The applicant
<b>Attorney Name:</b>	Information not available
<b>Case type:</b>	I485
<b>Filing date:</b>	Information not available
<b>Receipt #:</b>	SRC-06-136-52831
<b>Beneficiary (if you filed for someone else):</b>	NDOM, MAMADOU
<b>Your USCIS Account Number (A-number):</b>	Information not available
<b>Type of service requested:</b>	Case Status - Outside Processing Time

The status of this service request is:

The processing of your petition/application has been delayed. All petitions/applications received by this Service are required to have routine security checks that are resulting in delays of the adjudication of petitions/applications. We can give no definite indication of when they will be completed. We apologize for the delay.XM158

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

**U.S. Department of Homeland Security**

Texas Service Center

P.O. Box 851488

Mesquite, TX 75185-1488

**U.S. Citizenship  
and Immigration  
Services**

Tuesday, November 13, 2007

MAMADOU NDOM  
220 13TH ST  
VALLEJO CA 94590

Dear MAMADOU NDOM:

On 10/04/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

**Caller indicated they are:**

Applicant or Petitioner

**Attorney Name:**

Information not available

**Case type:**

I485

**Filing date:**

03/27/2006

**Receipt #:**

SRC-06-136-52831

**Beneficiary (if you filed for someone else):**

NDOM, MAMADOU

**Your USCIS Account Number (A-number):**

Information not available

**Type of service requested:**

Outside Normal Processing Times

The status of this service request is:

Our review indicates that this case is actually within our current processing time. We regret any misunderstanding. If you do not receive a decision or notice of other action within our current processing time, check our website for an update or call customer service at the number provided below.

#237

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

**U.S. Department of Homeland Security**

Texas Service Center

P.O. Box 851488

Mesquite, TX 75185-1488

**U.S. Citizenship  
and Immigration  
Services**

Monday, July 14, 2008

MAMADOU NDOM  
220 13 ST.  
VALLEJO CA 94590

Dear Mamadou Ndo.

On 04/28/2008 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

**Caller indicated they are:**

Applicant or Petitioner

**Attorney Name:**

Information not available

**Case type:**

I485

**Filing date:**

03/24/2006

**Receipt #:**

SRC-06-136-52831

**Beneficiary (if you filed for someone else):**

Information not available

**Your USCIS Account Number (A-number):**

A076858149

**Type of service requested:**

Expedite

Outside Normal Processing Times

The status of this service request is:

Based on your request we researched the status of this case. We are actively processing this case. However, we have to perform additional review on this case and this has caused a longer processing time. If you do not receive a decision or other notice of action from us within 6 months of this letter, please call customer service at the number provided below.

xm0153

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

*OKAY IT IS*

**U.S. Department of Homeland Security**

Texas Service Center

P.O. Box 851488

Mesquite, TX 75185-1488



**U.S. Citizenship  
and Immigration  
Services**

Thursday, May 3, 2007

MAMADOU NDOM  
220 13TH ST  
VALLEJO CA 94590

Dear MAMADOU NDOM:

On 04/11/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

**Caller indicated they are:**

The applicant

**Attorney Name:**

Information not available

**Case type:**

I485

**Filing date:**

Information not available

**Receipt #:**

SRC-06-136-52831

**Beneficiary (if you filed for someone else):**

NDOM, MAMADOU

**Your USCIS Account Number (A-number):**

Information not available

**Type of service requested:**

Non-delivery

The status of this service request is:

The processing of your petition/application has been delayed. All petitions/applications received by this Service are required to have routine security checks that are resulting in delays of the adjudication of petitions/applications. We can give no definite indication of when they will be completed. We apologize for the delay.

xm0153

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

September 4/007

MR. MAMADOU NDOM  
200-13TH STREET  
VALLEJO, CA 94590

Request No.: 1090435- 000  
Subject: NDOM, MAMADOU

Dear Requester:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request noted above.

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters. No records responsive to your FOIPA request were located by a search of the automated indices.

You may file an administrative appeal by writing to the Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David M. Hardy".

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 20, 2006

MR. MAMADOU NDOM  
220 13<sup>TH</sup> STREET  
VALLEJO, CA 94590

Request No.: 1065726-000  
Subject: NDOM, MAMADOU

Dear Requester:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request noted above.

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters. No records responsive to your FOIPA request were located by a search of the automated indices.

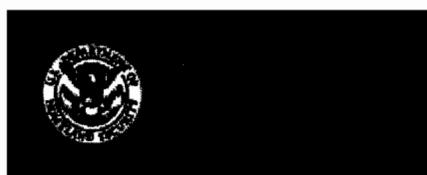
Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David M. Hardy".

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure



*Exhibit 28*

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## Questions and Answers: Background Check Policy Update

### Q1. What applications are affected by this policy change?

A1. Applications included in this policy are:

- I-485, Application to Register Permanent Residence or Adjust Status;
- I-601, Application for Waiver of Ground of Inadmissibility;
- I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act; and
- I-698, Application to Adjust from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603).

### Q2. How has USCIS changed its national security requirements?

A2. USCIS has not changed its background check policies for naturalization applications. Recently, the agency did modify its existing guidance for certain applications (see above) where the immigration laws allow for the detention and removal of individuals if actionable information from a FBI name check response is received after approval.

No application for lawful permanent residence will be approved until a definitive FBI fingerprint check and Interagency Border Inspection Services (IBIS) check are completed and resolved favorably. (Please refer to the USCIS Immigration Security Checks fact sheet in the Related Links section of this page for more information.)

### Q3. How has USCIS changed its adjudications requirements?

A3. For these forms, including applications for lawful permanent residence, USCIS will adjudicate the application based on all required evidence outlined in applicable law and regulation if the application is otherwise approvable, outside of normal processing times, and the FBI name check request has been pending for more than 180 days.

### Q4. What happens if USCIS later receives adverse information from an FBI name check?

A4. In the unlikely event that Department of Homeland Security, (DHS) receives actionable adverse information from the FBI name check after the application is adjudicated, DHS may detain the applicant and initiate removal proceedings.

### Q5. Why is this policy being implemented?

A5. This policy change responds to a 2005 DHS Inspector General recommendation that USCIS better align its background check screening policies with those of U.S. Immigration and Customs Enforcement.

### Q6. Is this policy consistent with the national security priorities of USCIS and the Department of Homeland Security?

### Related Links:

[Fact Sheet: USCIS Immigration Security Checks \(42KB PDF\)](#)  
All applicants for a...

### Take Our Survey:

I found this information:

Useful

Slightly Useful

Not Useful

Don't Know

**SUBMIT >**

A6. Yes. Applications for lawful permanent residence will not be approved until a definitive FBI fingerprint check and Interagency Border Inspection Services (IBIS) check are completed and resolved favorably. In addition, in the unlikely event that DHS receives actionable adverse information after the application is approved, removal proceedings may be initiated.

**Q7. How many applications for lawful permanent residence are immediately affected by this policy change?**

A7. USCIS is aware of approximately 47,000 applications for permanent residence (I-485) cases that are otherwise approvable but have an FBI name check pending. A portion of these cases are both outside normal processing times and have an FBI name check that has been pending for more than 180 days. These cases will be subject to processing under the new policy. USCIS anticipates the majority of the cases that can now be adjudicated will be processed by mid-March 2008.

**Q8. Does this policy change affect naturalization applications?**

A8. No. There is no change in the requirement that FBI name check, FBI fingerprint and Interagency Border Inspection Services (IBIS) check results be obtained and resolved prior to the adjudication of an Application for Naturalization (N-400).

**Q9. How long will it take for USCIS to work through the cases affected by the policy change?**

A9. USCIS has begun identifying cases affected by this policy modification in each field office and service center. Each office will evaluate the pending cases and will adjust their workload accordingly. USCIS anticipates the majority of the cases subject to this policy modification will be processed by mid-March 2008. We recommend customers wait until March 10 before inquiring about their cases. This will allow each office sufficient time to identify and adjudicate pending cases.

**Q10. The memorandum identifies I-485, I-601, I-687 and I-698 forms. Is there a plan to include other forms, specifically nonimmigrant and naturalization, in this policy?**

A10. No.

**Q11. Should customers contact USCIS through the 1-800 customer service number or make an INFOPASS appointment to visit their local office if their case is outside of normal processing times and they believe their application meets the criteria of this new policy?**

A11. For pending applications outside of normal processing times, we recommend that customers wait until March 10, 2008, before inquiring about cases affected by this policy modification. This will allow each office sufficient time to identify and adjudicate the relevant pending cases. If no action is taken by mid-March, we recommend inquiring with the USCIS customer service line at 1-800-375-5283. This procedure is for customers who have been previously informed that their case is pending due to the FBI name check. (Cases that are still pending within the processing times will be completed when the related adjudication actions are completed.)

**Q12. Will USCIS automatically notify an applicant to appear at an Application Support Center, (ASC) if his or her fingerprints have expired?**

A12. Applicants will be notified through an appointment notice if new or updated fingerprint checks are needed.

# EXHIBIT 30

*Office of Communications*



**U.S. Citizenship  
and Immigration  
Services**

# News Release

April 2, 2008

## **USCIS AND FBI RELEASE JOINT PLAN TO ELIMINATE BACKLOG OF FBI NAME CHECKS**

*Partnership Establishes Series of Milestones To Complete Checks*

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) and the Federal Bureau of Investigation (FBI) today announced a joint plan to eliminate the backlog of name checks pending with the FBI.

USCIS and the FBI established a series of milestones prioritizing work based on the age of the pending name check. The FBI has already eliminated all name check cases pending more than four years.

“This plan of action is the product of a strong partnership between USCIS and the FBI to eliminate the backlogs and to strengthen national security,” said USCIS Director Emilio Gonzalez.

By increasing staff, expanding resources, and applying new business processes, the goal is to complete 98 percent of all name checks within 30 days. USCIS and the FBI intend to resolve the remaining two percent, which represent the most difficult name checks and require additional time to complete, within 90 days or less. The goal is to achieve and sustain these processing times by June 2009.

The joint plan will focus on resolving the oldest pending FBI name checks first. USCIS has also requested that the FBI prioritize resolution of approximately 29,800 pending name checks from naturalization applicants submitted to the FBI before May 2006 where the naturalization applicant was already interviewed.

The target milestones for processing name checks are:

Completion Goal	Category
May 2008	Process all name checks pending more than three years
July 2008	Process all name checks pending more than two years
Nov. 2008	Process all name checks pending more than one year
Feb. 2009	Process all name checks pending more than 180 days
June 2009	Process 98 percent of all name checks within 30 days and process the remaining two percent within 90 days.

– USCIS –

*Exhibit 29*

**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
*Domestic Operations of Directorate*  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

**FEB 4 - 2008**

HQ 70/23 & 70/28.1

## Interoffice Memorandum

**TO:** Field Leadership

**FROM:** Michael Ayles  
Associate Director, Domestic Operations

**SUBJECT:** Revised National Security Adjudication and Reporting Requirements

### Background

U.S. Citizenship and Immigration Services (USCIS) conducts background checks on all applicants, petitioners, and beneficiaries seeking immigration benefits. This is done both to enhance national security and to ensure the integrity of the immigration process. USCIS has previously mandated that FBI name checks be completed and resolved before any positive adjudication can proceed on certain form types. This memorandum modifies existing guidance for applications where statutory immigration provisions allow for the detention and removal of an alien who is the subject of actionable information that is received from the FBI or other law enforcement agencies after approval of the application.

USCIS is issuing revised guidance in response to recommendations of the DHS Office of Inspector General (OIG-06-06) regarding the need to align the agency's background and security check policies with those of U.S. Immigration and Customs Enforcement (ICE). The *Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals* regulations prevent immigration judges and the Board of Immigration Appeals (BIA) from granting benefits to aliens before DHS confirms that all background and security checks have been completed. See 8 C.F.R. § 1003.47(g); 8 C.F.R. § 1003.1(d)(6)(i). In the context of removal proceedings, ICE has determined that FBI fingerprint checks and Interagency Border Inspection Services (IBIS) checks are the required security checks for purposes of the applicable regulations. In the unlikely event that FBI name checks reveal actionable information after the immigration judge grants an alien permanent resident status, DHS may detain and initiate removal proceedings against the permanent resident. See 8 U.S.C. § 1227; see also 8 U.S.C. § 1256 (allowing DHS to rescind an alien's adjustment of status).

**Revised National Security Adjudication and Reporting Requirements**

Page 2

**Revised Guidance**

A definitive FBI fingerprint check and the IBIS check must be obtained and resolved before an Application for Adjustment of Status (I-485), Application for Waiver of Ground of Inadmissibility (I-601), Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (I-687), or Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603) (I-698) is approved. USCIS will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the I-485, I-601, I-687, or I-698 and proceed with card issuance. The FBI has committed to providing FBI name check results within this timeframe.

There is no change in the requirement that FBI fingerprint check, IBIS check and FBI name check results be obtained and resolved prior to the adjudication of an Application for Naturalization (N-400).

Pending further guidance regarding post-audit reporting and tracking requirements and modifications to associated quality assurance procedures, applications approved pursuant to this memorandum shall be held at the adjudicating office. If derogatory or adverse information is received from the FBI after the application is approved, USCIS will determine if rescission or removal proceedings are appropriate and warranted.

Subject to the reporting requirements set forth in the February 16, 2007, memorandum titled "FBI Name Checks Policy and Process Clarification for Domestic Operations," an application or petition may be denied, dismissed, administratively closed, withdrawn, or referred to the Immigration Court at any time.

Questions regarding this memorandum should be directed through appropriate supervisory and operational channels. Local offices should work through their chain of command.

**Distribution List:**

Regional Directors

Service Center Directors

District Directors (except foreign)

Field Officer Directors (except foreign)

National Benefits Center Director

**From:** Smith, Gregory B  
**Sent:** Tuesday, February 05, 2008 11:40 AM  
**To:** Cannon, Michael  
**Subject:** Revised USCIS Name Check Guidance

Michael,

Thank you for meeting last week to discuss our mutual efforts to address the FBI name check backlog.

I am attaching revised guidance that USCIS will distribute to the field today. Under the revised guidance, a definitive FBI fingerprint check and the IBIS check must be obtained and resolved before an adjustment of status application is approved. USCIS will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the adjustment of status application.

The overwhelming majority of FBI name checks are completed within six months, and it is the goal to complete all FBI name checks within that time frame. While USCIS would prefer to have the FBI name check results before approving the application (and will have the results as the FBI meets its processing goals), the alien is already in the United States and DHS is able to detain and remove the alien irrespective of whether the adjustment application has been approved or remains pending.

The revised guidance does not make any changes to naturalization applications. USCIS will continue to require that FBI fingerprint check, IBIS check and FBI name check results be obtained and resolved prior to the adjudication of an application for naturalization. It is exceedingly difficult to denaturalize a citizen, and it is imperative that we protect the integrity of the naturalization process.

However, USCIS will prioritize allocation of additional appropriations (i.e. a significant percentage of the \$20 million in the DHS appropriations bill) to addressing FBI name checks that delay adjudication of naturalization applications. Existing resources should not be diverted from pending adjustment of status name checks, but new resources should be directed to resolving those checks that hold up the oldest naturalization applications. All available options should be explored, including the use of additional contractors, shift work, rehired consultants, and any other tools designed to decrease case processing times and increase productivity without sacrificing quality controls.

USCIS has previously requested that the FBI provide a detailed and reliable plan for linking additional resources to measurable improvements in FBI name check process. USCIS looks forward to working with you to develop that plan. USCIS has committed to addressing the backlog of pending naturalization applications, and dedicating additional resources to tackle the FBI name check issue is critical to the agency's success.

Regards,

Greg

ARCIS 0103



# EXHIBIT 31

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## U.S. Citizenship and Immigration Services Texas Service Center Processing Dates Posted July 15, 2008

The processing times shown below are a tool for our customers to gauge our current processing times. When applications and petitions are completed within our target timeframes, that goal will be shown in the data display.

The processing times shown below are for applications that have just been completed. If you have just filed your application, these timeframes may not reflect how long your application will take to be completed. We encourage you to check this page periodically before inquiring about your case. The processing times are updated monthly.

USCIS has received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, we received 1.4 million applications for naturalization; nearly double the volume we received the year before. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees, to address this workload.

As a result, average processing times for certain application types may be longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 13-15 months to process.

We offer a variety of services after you file. For example, for most kinds of cases you can check the status of your case online.

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our customer guide –

Case Services - How do I... know what kind of services are available to me after I file my application or petition?

### Service Center Processing Dates for **Texas Service Center** Posted July 15, 2008

Form	Title	Classification or Basis for Filing	Processing Timeframe
I-90	Application to Replace Permanent Resident Card	Initial issuance or replacement	March 17, 2008
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94	April 16, 2008
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad	December 27, 2007

I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S.	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S.	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	H-2A - Temporary workers	June 15, 2008
I-129	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	June 15, 2008
I-129	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	E - Treaty traders and investors	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	L - Intracompany transfers	May 16, 2008
I-129	Petition for A Nonimmigrant Worker	Blanket L	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	O - Extraordinary ability	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	R - Religious occupation	December 27, 2007
I-129	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	December 27, 2007
I-131	Application for Travel Document	All other applicants for advance parole	April 16, 2008
I-140	Immigrant Petition for Alien Worker	Extraordinary ability	July 19, 2007
I-140	Immigrant Petition for Alien Worker	Outstanding professor or researcher	July 19, 2007
I-140	Immigrant Petition for Alien Worker	Multinational executive or manager	July 19, 2007
I-140	Immigrant Petition for Alien Worker	Schedule A Nurses	July 23, 2007
I-140	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability	July 23, 2007
I-140	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability requesting a National Interest Waiver	July 23, 2007
I-140	Immigrant Petition for Alien Worker	Skilled worker or professional	July 23, 2007
I-140	Immigrant Petition for Alien Worker	Unskilled worker	July 23, 2007
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	December 07, 2006
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	July 16, 2007
I-526	Immigrant Petition By Alien Entrepreneur	For use by an entrepreneur who wishes to immigrate to the United States	January 17, 2008
I-539	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	June 14, 2007

I-539	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	June 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	June 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other change of status applications	June 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	June 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	June 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	June 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other extension applications	June 14, 2007
I-612	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	March 20, 2007
I-730	Refugee/Asylee Relative Petition	Petition for accompanying family members of a refugee or an asylee	August 25, 2007
I-751	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	January 17, 2008
I-765	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	April 16, 2008
I-765	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	May 19, 2008
I-765	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	April 16, 2008
I-765	Application for Employment Authorization	Based on TPS for Honduras/Nicaragua [(c)(19), (a)(12)]	April 16, 2008
I-765	Application for Employment Authorization	Based on TPS for El Salvador [(c)(19)(a)(12)]	April 16, 2008
I-765	Application for Employment Authorization	All other applications for employment authorization	April 16, 2008
I-817	Application for Family Unity Benefits	Voluntary departure under the family unity program	January 06, 2008
I-824	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	January 17, 2008
I-829	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors)	January 04, 2008
I-829	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors) based on PL107-273	January 04, 2008

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